

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In re)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations, and)
Petition to Modify License of)
Gresham Communications, Inc.,)
Licensee of WPAL-FM,)
Walterboro, South Carolina)

Docket No. 93-169

RM-8246

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Policy and Rules Division

**REPLY COMMENTS OF
MILLENNIUM COMMUNICATIONS OF CHARLESTON, INC.**

Millennium Communications of Charleston, Inc. ("Millennium"), licensee of Station WWWZ-FM, Summerville, South Carolina, by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its reply to the "Comments" filed by Gresham Communications, Inc. ("Gresham") in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on June 22, 1993, proposing to amend the FM Table of Allotments to delete Channel 265C3 from Walterboro, South Carolina, and add Channel 265C3 to Ridgeville, South Carolina and to modify the license of Station WPAL-FM to specify Ridgeville, South Carolina as its community of license. Gresham is licensee of WPAL-FM and filed the petition initiating this proceeding.

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Preliminary Statement

In the NPRM the Commission requested that Gresham "provide information showing the areas and populations which will receive a new service and the areas and

populations which will lose an existing service if Channel 265C3 is reallocated to Ridgeville," and "indicate the number of reception services which are now available within the gain and loss areas." See NPRM at 1. Gresham submitted a document labelled "Exhibit 1" with its Comments wherein it attempted to respond to the Commission's request. However, this attempt is fatally deficient. Exhibit 1 bears no indication of who prepared it, nor does Exhibit 1 specify the methodology used to calculate the data submitted therein.¹ Millennium's best efforts to analyze this data indicate that the population and coverage information may be substantially in error. For the reasons set forth below, Millennium is unable (as, we suspect, the Commission will be) to confirm or refute the information specified therein due to the lack of a description of the methodology upon which the data are based.

Specifically, Gresham's Exhibit 1 includes population and signal coverage area data. However, Gresham does not provide any basis for these figures. As to population, there is neither an indication of the origin of the population data (i.e. 1980 or 1990 census or other data), nor a description of the methodology used to determine the population within the 60 dBu contour. As to the signal coverage data, Gresham fails to describe the method used to calculate the respective contours. Without an appropriate description of the engineering methodologies used, Millennium has been unable to analyze the data submitted by Gresham to determine its accuracy with any degree of confidence. We submit that the Commission will likewise be unable to confirm the accuracy of Gresham's submission without a description of the methodologies used. Therefore, in light of Gresham's failure to adequately respond to the

¹ Exhibit 1 sets forth facts upon which the Commission and other parties are encouraged to rely, but is neither signed nor sworn.

Commission's request for information, Gresham's petition should be denied and this proceeding terminated.²

However, to the extent possible, Millennium submits below its reply to the Comments filed by Gresham. In its Comments, Millennium opposed Gresham's request for reallocation of Channel 265C3 and modification of WPAL-FM's community of license, because the reallocation of Channel 265C3 will neither further the public interest nor the policy goals of the allocation priorities. The Comments submitted by Gresham do not undermine that conclusion, rather, the population and other data submitted by Gresham appear to support the conclusion that Gresham seeks to withdraw an aural service from a rural area and a second local full-time service from Walterboro in favor of the greener pasture of the Charleston Urbanized Area. Moreover, nothing submitted by Gresham in its Comments undermines the inevitable conclusion that Walterboro is the more deserving community. As stated by Millennium in its Comments, grant of the petition would be a misapplication of the allocation priorities and a miscarriage of the Commission's rule allowing a station to change its community of license without facing competing applications.

**The Data Submitted By Gresham Supports
Denial of a First Local Service Preference**

Gresham states that while 9,348 persons will lose 60 dBu service from WPAL-FM, 89,574 persons will gain a new 60 dBu service. Gresham further states that the individuals who will lose service from WPAL-FM reside in a "sparsely populated" area while the gain area

² At the minimum, Gresham should be directed to amend its submission with service upon Millennium and an appropriate time frame allowed for analysis and further comment by Millennium. Allowing Gresham to amend its showing outside a pleading cycle would deny Millennium the right to full and effective participation in this proceeding as required by the Administrative Procedure Act.

"more heavily populated and includes a number of incorporated communities." Four of the seven communities Gresham cites as within its gain area, Goose Creek, Ladson, Hanahan and North Charleston, are within the Charleston Urbanized Area. *See* Engineering Statement, Figure 2, submitted with Millennium's Comments. In addition, one of the communities cited, St. George, is within WPAL-FM's current predicted contour, and therefore cannot be in the gain area.

The facts cited above support denial of a first local service preference to Ridgeville. As noted in Millennium's Comments at page 4, the Commission considers three factors when determining whether a community is deserving of a first local service preference. Millennium has demonstrated that application of these factors to the facts of the instant proposal leads to the conclusion that Ridgeville is not deserving of a first local service preference. *See* Millennium Comments at 4-6. The facts summarized above provide further support for this conclusion. The first factor considered by the Commission when determining whether a community is deserving of a first local service preference is the degree to which the proposed station can provide service to the metropolitan area. As noted above, the majority of the communities Gresham cites as within its gain area are also within the Urbanized Area of Charleston, thus further supporting the conclusion that a station allotted to Ridgeville, will, in fact, serve the Charleston Urbanized Area. Moreover, the loss area is decidedly rural while the gain area is predominantly urban. Clearly, this data supports treatment of an allotment to Ridgeville as an additional service to Charleston and not as first local service to Ridgeville.

**Reallotment to Ridgeville Is Not Required
To Allow WPAL-FM To Operate Omnidirectionally**

Gresham states in its Comments that "[t]he land area served by WPAL-FM would be increased if the channel were reallocated to Ridgeville."³ See Exhibit 1 to Comments at (unnumbered) 2. Gresham states that this increased coverage would be due to "higher terrain for the antenna site as well the ability of the station to operate nondirectionally." *Id.*

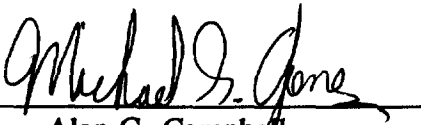
However, as shown in the Engineering Statement submitted with Millennium's Comments, a substantial area exists which meets all separation requirements and which provides 70 dBu coverage to both Walterboro and Ridgeville using an omnidirectional antenna. See Millennium's Comments at 9 and attached Engineering Statement at 3 and Figure 4. Thus, reallotment to Ridgeville is not necessary to allow WPAL-FM to use an omnidirectional antenna.

³ Gresham states that the land area would increase from 4,591 square kilometers to 4,811 square kilometers, for a net increase of 220 kilometers.

Conclusion

Gresham has failed to adequately provide the information requested by the Commission, and its petition should accordingly be dismissed. If a supplemental submission is allowed, the Commission should require service upon Millennium and allow an adequate time period for response. In light of the foregoing, and the arguments set forth in Millennium's Comments, the only proper conclusion is that the reallocation of Channel 265C3 to Ridgeville will not further the public interest nor the policy goals of the allotment priorities. In order to achieve a fair efficient and equitable distribution of broadcast service, the Commission must apply the allotment priorities in a flexible manner and, accordingly, deny Gresham's petition to change its community of license to Ridgeville.

Respectfully submitted,
MILLENNIUM COMMUNICATIONS OF
CHARLESTON, INC.

By: 
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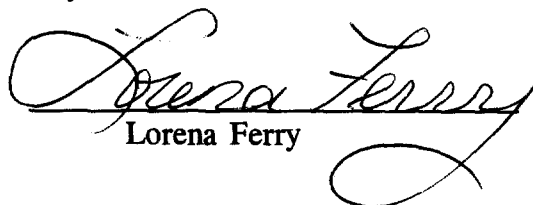
CERTIFICATE OF SERVICE

I, Lorena Ferry, secretary in the law offices of Irwin, Campbell & Crowe, hereby certify that true and complete copies of the foregoing "Reply Comments of Millennium Communications of Charleston, Inc." were served this 30th day of August, 1993, upon the parties listed below via first class mail, postage prepaid, or hand delivered, as indicated.

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